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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



CAREFIRST OF MARYLAND, INC.,
d/b/a CAREFIRST BLUE CROSS)
BLUE SHIELD,)

OPPOSER,)

v.)

FIRSTHEALTH OF)
THE CAROLINAS, INC.,)

APPLICANT.)

12-02-2002

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #77

OPPOSITION NO. 91/124,847

[Appln. Serial No. 76/222,230]

**OPPOSER'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR
RECONSIDERATION OF ORDER DATED SEPTEMBER 23, 2002**

In its response to Opposer's Motion for Reconsideration, Applicant mischaracterizes Opposer's position regarding Applicant's Motion to Stay Discovery filed on August 26, 2002. Opposer does not oppose the suspension of the proceeding. Instead, its opposes Applicant's attempt to shirk its discovery obligations by filing a Motion to Stay Discovery rather than serving responses to Opposer's timely served discovery requests. Therefore, Opposer has not contradicted itself as Applicant suggests. Opposer reiterates its request that the Board reconsider Applicant's Motion to Stay and Opposer's memorandum in opposition thereto.

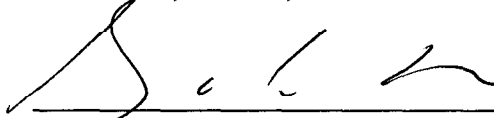
In light of the discovery Opposer obtained in Opposition No. 116,355, Opposer changed its position regarding the similarity of Applicant's marks involved in that opposition and in the instant one. The Board will decide whether or not there is a difference between "FIRSTCAROLINA CARE," a composite mark with the term "CARE" disclaimed, and "FIRSTCAROLINACARE," a unitary mark.

Finally, the case law regarding dilution claims does not state that the opposer must provide an exact date on which its mark became famous. This is why the concept of *notice* pleading exists. Therefore, Opposer's dilution claim is legally sufficient in that it does allege that its mark became famous prior to Applicant's first use of its mark "FIRSTCAROLINACARE." Opposer requests that the Board reconsider its decision on Opposer's Motion for Leave to Amend its Notice of Opposition and allow its amended notice of opposition.

In conclusion, Opposer respectfully requests that the Board (1) consider its Memorandum in Opposition to Applicant's Motion to Stay, (2) acknowledge that the mark in U.S. Application Serial No. 75/455,343 is "FIRSTCAROLINA CARE," a composite mark, and that there is an issue as to whether the services in U.S. Application Serial No. 75/455,343 and 76/22,230 are different or the same, and (3) accept Opposer's Amended Notice of Opposition.

Respectfully submitted,

STEVEN S. DAVIS, MILLER & MOSHER, LLP

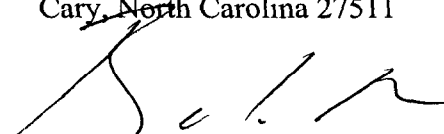


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CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Opposer's Motion for Reconsideration is being forwarded this 2nd day of December, 2002, to counsel for Applicant, by first class mail, postage prepaid.

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